

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERTO ROJAS, by and through his  
guardian ad litem, SERGIO ROJAS,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION, et al.,

Defendants.

No. 2:21-cv-1086 DAD AC P

ORDER

Plaintiff Roberto Rojas is a state prisoner proceeding by and through his guardian ad litem, with counsel, in this civil rights action. Pending before the court are plaintiff's motions to compel discovery and both parties' motions for sanctions. ECF Nos. 53-56. For the reasons stated below, the court will grant plaintiff's motions to compel in part and defer ruling on other matters pending additional meet and confer efforts. The court will also defer ruling on the requests for sanctions.

I. Background

A. Nature of the Action and Factual Disputes

This case proceeds on two set of claims: (1) against defendants Cary, Saso, and Walik for negligence, deliberate indifference to plaintiff's safety and serious medical needs, and violation of the Bane Act, all based on their responses to the attack on plaintiff by his cellmate; and (2) against defendants Cary and Ng for negligence, deliberate indifference to plaintiff's safety and

serious medical needs, and violation of the Bane Act, based on plaintiff's cell assignment. ECF No. 27 at 6. The parties agree that the factual disputes include: (1) whether defendant Ng exercised reasonable care in approving the new cell assignment for plaintiff; (2) whether defendants Cary, Saso, and Walik exercised reasonable care in responding to the attack; and (3) whether defendants Cary, Saso, and Walik exercised reasonable care in providing medical treatment to plaintiff following the attack. ECF No. 59 at 2; ECF No. 60 at 2.

#### B. Procedural Background

On January 15, 2025, plaintiff served Interrogatories, Set One, and Demand for Production of Documents Directed at Defendants, Set One. ECF Nos. 53 at 2; ECF No. 53-2 at 5-10, 12-16; ECF No. 54 at 2; ECF No. 54-2 at 5-10. On February 18, 2025, defendants provided some responses to plaintiff's interrogatories and requests for production. ECF No. 53-2 at 18-28, 30-38; ECF No. 54-2 at 12-25; ECF No. 61-1 at ¶¶ 3-5. Defendants did not produce the video surveillance of the incident, which was requested on January 15, 2025, until March 5, 2025, and only after plaintiff's counsel once again demanded it. ECF No. 61-1 at 2.

Because several discovery requests were still outstanding, on March 11, 2025, plaintiff's counsel sent defendants' counsel a meet and confer letter seeking to compel further responses to:

- Defendant Cary's Interrogatories Nos. 1, 6-10, 14-16, 19, 22-24;
- Defendant Ng's Interrogatories Nos. 2-6, 8-9, 16, 19;
- Defendant Walik's Interrogatories Nos. 8-9, 14-15, 20, 22;
- Defendant Saso's Interrogatories Nos. 2, 8-9, 14-15; and
- Requests for Production of Documents ("RFPs"), Set One, Nos. 1-3, 6-12, 14-27.

ECF No. 53-2 at 40-45; ECF No. 54-2 at 27-32. The letter stated that "this is our meet and confer effort prior to bringing a motion to compel further responses." ECF No. 53-2 at 40; ECF No. 54-2 at 27.

On March 19, 2025, six days before the commencement of the correction officers' depositions, the defense produced 354 pages of CDCR records. ECF No. 61-1 ¶ 6. On March 21, 2025, four days before the depositions provided an additional 1425 pages of discovery. Id. ¶ 7. And on March 24, 2025, one day before the start of the officers' depositions, an additional 212

1 pages of records were produced. Id. ¶ 8.

2 On March 31, 2025, defendants’ counsel sent a letter stating that it was their “good faith  
3 effort to respond to [plaintiff’s] March 11, 2025, letter regarding Defendants’ responses to  
4 Plaintiff’s interrogatories and requests for production.” ECF No. 53-2 at 47-61; 54-2 at 34-48.

5 On April 3, 2025, during defendant Cary’s deposition, defense counsel informed  
6 plaintiff’s counsel that the “logbook” that was sought in written discovery was “missing.” ECF  
7 NO. 61-1 ¶ 10. Defendants’ counsel agreed to allow five interrogatories, which were not  
8 discussed or agreed upon at a meet-and-confer telephone conference, and refused to produce a  
9 PMK witness. Id. ¶ 12.

10 On May 2, 2025, plaintiff’s and defendants’ counsel met and conferred over the telephone  
11 to further discuss discovery requests. ECF No. 60 at 1. Despite their efforts, they were unable to  
12 resolve their disputes.

13 During the depositions of two inmates on May 7 and 8, 2025—depositions which were  
14 specifically approved by the court, and for which the discovery deadline was extended due to  
15 defendants’ failure to have timely identified the witnesses, ECF No. 46 at 9-10—plaintiff learned  
16 that these key witnesses had been interviewed by CDCR “internal affairs” after the incident and  
17 that at least one such interview was videorecorded. ECF No. 61-1 ¶¶ 17-20.

18 On May 7, 2025, plaintiff’s counsel sent defense counsel a letter regarding Walik’s, Ng’s,  
19 and Saso’s Interrogatories No. 7, Cary’s Interrogatory No. 9, and RFP No. 30. ECF No. 53-2 at  
20 78. The letter indicates “[t]his is our meet-and-confer effort.” Id. That same day, defendants’  
21 counsel responded via email that they received the letter and were looking into the issue  
22 concerning interviews conducted by ISU related to this case. ECF No. 53-2 at 79.

23 On May 16, 2025, defendants informally produced a video interview of one witness,  
24 Harold Harvey, and asserted it was the “only recorded interview.” ECF No. 61-1 ¶ 22. The  
25 response did not indicate whether other interviews had been conducted that were not recorded via  
26 video, and did not produce any other interview records. Id. ¶ 23.

27 On May 16, 2025, plaintiff timely filed motions to compel further responses to plaintiff’s  
28 interrogatories and requests for production. ECF Nos. 53, 54. On May 20, 2025, the parties met

1 and conferred regarding some past discovery issue, such as a missing logbook, and additional  
2 discovery issue that came to light earlier that month.

3 C. Motions to Compel

4 Plaintiff's motions seek further responses to the following requests:

- 5 • Defendant Cary's Interrogatories Nos. 7-9, 14, 20-21;
- 6 • Defendant Ng's Interrogatories Nos. 2, 7-8; and
- 7 • RFP Nos. 2-3, 6, 26-27, 30.

8 Id. Plaintiff also seeks \$2,000 in sanctions against defendants and their attorneys for the cost of  
9 bringing the motion on grounds that defendants opposition is not substantially justified. ECF  
10 Nos. 53-1 at 11; ECF No. 53-2 at 2-3; ECF No. 54-1 at 12; ECF No. 54-2 at 2-3.

11 Defendants have filed oppositions to both motions. ECF Nos. 55, 56. In both, defendants  
12 argue that the motions should not be heard because plaintiff's counsel failed to comply with the  
13 Court's rules and orders regarding the meet and confer process. ECF No. 55 at 6-7; ECF No. 56  
14 at 6-7. Alternatively, defendants argue that if the court is willing to hear plaintiff's motions to  
15 compel, the court should entertain only those requests for which there was a live meet and confer,  
16 and that the motions be denied. ECF No. 55 at 7-8; ECF No. 56 at 7-8. Defendants further argue  
17 that they are entitled to sanctions because plaintiff's counsel failed to comply with the live meet  
18 and confer requirement for most items in his motion to compel, and because defendants'  
19 responses and objections were substantially justified. ECF No. 55 at 10; ECF No. 56 at 8-9.  
20 Defendants seek "an award of sanctions in the amount of \$10,545.00 to compensate them for the  
21 expense of responding to Plaintiff's improper motion." ECF No. 55 at 10; ECF No. 56 at 9.

22 Plaintiff replies that defense counsel "has repeatedly withheld information and belatedly  
23 disclosed documents and information only after being threatened with a motion to compel," ECF  
24 No. 61 at 1; ECF No. 62 at 1, and has provided inaccurate statements regarding the discovery  
25 issues. ECF No. 61 at 4-5; ECF No. 61-1 ¶ 30; ECF No. 62-1 ¶ 25. Plaintiff's counsel asserts  
26 that the discovery issues were both discussed generally and specifically on multiple occasions,  
27 ECF No. 61 at 5; ECF No. 61-1 ¶ 29; ECF No. 62-1 ¶ 24, and that defendants' counsel  
28 inaccurately claims that they voluntarily offered to allow plaintiff's counsel to depose two

1 additional witnesses after the close of discovery. ECF No. 61 at 4; ECF No. 62 at 3. Plaintiff  
2 points out that the court extended the discovery deadline for the purpose of deposing these two  
3 additional witnesses after finding that their identification had been belatedly disclosed by  
4 defendants. ECF No. 61 at 4; ECF No. 61-1 ¶ 17; ECF No. 62-1 ¶ 12. Additionally, plaintiff  
5 argues that during the deposition of these two additional witnesses, it became apparent that  
6 defense counsel was withholding additional information, records, and identification of witnesses  
7 pertaining to this case that should have been disclosed and/or produced but were not. ECF No. 61  
8 at 4-5; ECF No. 61-1 ¶¶ 18-20, 25; ECF No. 62-1 ¶ 12. Lastly, plaintiff indicates that he will  
9 seek to amend the complaint based on what has come to light, and that the amended complaint  
10 will include a failure to train claim. ECF No. 61-1 ¶ 45; see also ECF No. 61-1 at 1 (May 20,  
11 2025 meet and confer follow up letter).

## 12 II. Legal Standards

### 13 A. Federal Rules of Civil Procedure

14 The scope of discovery under Federal Rule of Civil Procedure 26(b)(1) is broad.  
15 Discovery may be obtained as to “any nonprivileged matter that is relevant to any party’s claim or  
16 defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1). “Information within  
17 this scope of discovery need not be admissible in evidence to be discoverable.” Id. The court,  
18 however, must limit discovery if it is “unreasonably cumulative or duplicative, or can be obtained  
19 from some other source that is more convenient, less burdensome, or less expensive;” or if the  
20 party who seeks discovery “has had ample opportunity to obtain the information by discovery;”  
21 or if “the proposed discovery is outside the scope permitted by Rule 26(b)(1).” Fed. R. Civ. P.  
22 26(b)(2)(C). The purpose of discovery is to “make a trial less a game of blind man’s buff and  
23 more a fair contest with the basic issues and facts disclosed to the fullest practicable extent,”  
24 United States v. Procter & Gamble Co., 356 U.S. 677, 682 (1958) (citation omitted), and “to  
25 narrow and clarify the basic issues between the parties,” Hickman v. Taylor, 329 U.S. 495, 501  
26 (1947).

27 A party may propound interrogatories and request production of documents relating to any  
28 matter that may be inquired to under Rule 26(b). Fed. R. Civ. P. 33(a), 34(a). A responding party,

1 to the extent it is not objected to, must answer an interrogatory to “fully in writing under oath.”  
2 Any objection “must be stated with specificity.” Fed. R. Civ. P. 33(b)(3)-(4).

3 Under Federal Rule of Civil Procedure 37, a motion to compel may be made if “a party  
4 fails to answer an interrogatory submitted under Rule 33; or a party fails to produce documents or  
5 fails to respond that inspection will be permitted . . . as requested under Rule 34.” Fed. R. Civ. P.  
6 37(a)(3)(B)(iii)-(iv). The party seeking to compel discovery has the burden of showing that the  
7 discovery sought is relevant or that its denial will cause substantial prejudice. Hallett v. Morgan,  
8 296 F.3d 732, 751 (9th Cir. 2002). The opposing party is “required to carry a heavy burden of  
9 showing why discovery was denied.” Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir.  
10 1975).

11 A party who prevails on a motion to compel is entitled to its expenses, including  
12 reasonable attorney fees, unless the losing party was substantially justified in opposing the motion  
13 or other circumstances make such an award unjust. Fed. R. Civ. P. 37(a)(5). Conversely, a party  
14 who successfully opposes a motion to compel is entitled to recover “its reasonable expenses  
15 incurred in opposing the motion, including attorney’s fees” unless “the motion was substantially  
16 justified or other circumstances make an award of expenses unjust.” Id. “The party seeking fees  
17 bears the burden of documenting the hours expended in the litigation and must submit evidence  
18 supporting those hours and the rate claimed.” Welch v. Metro. Life Ins. Co., 480 F.3d 942, 945-  
19 46 (9th Cir. 2007). Recovery should not exceed the expenses and fees that were reasonably  
20 necessary to resist the offending action. Id. at 1185.

#### 21 B. Local Rules and Magistrate Judge’s Standing Order

22 Local Rule 251(b) requires that the parties meet and confer prior to filing  
23 a motion to compel discovery. E.D. Cal. L.R. 251(b). The Standing Orders of the undersigned  
24 U.S. Magistrate Judge provide that the undersigned “strictly enforces meet and confer  
25 requirements” and that “[w]ritten correspondence between the parties, including email, is  
26 insufficient to satisfy the parties’ meet and confer obligations under Local Rule 251(b). Prior to  
27 the filing of a Joint Statement, the parties *must confer in person or via telephone or video*  
28 *conferencing in an attempt to resolve the dispute.*” See <https://www.caed.uscourts.gov/caednew/>

assets/File/Judge Claire Standing Orders (updated March 2023).pdf.

### III. Discussion

#### A. Failure to Meet and Confer

It is unclear whether the parties have adequately satisfied the meet and confer requirements established by the local rules and the undersigned's standing order with respect to all discovery disputes raised in plaintiff's motions to compel. Defendants represent that the parties did not meet and confer in person or via telephone or video conference regarding defendant Cary's Interrogatories Nos. 8, 9, 20, and 21, defendant Ng's Interrogatories Nos. 7 and 8, and RFP Nos. 2, 6, 26-27, 30. ECF No. 55 at 4. Plaintiff responds that the parties discussed the discovery issues "generally and specifically on multiple occasions" and that "[t]his subject of this discovery was discussed on numerous occasions both in person, on the phone, and in writing." ECF No. 61-1 ¶¶ 29, 47.<sup>1</sup>

First, although plaintiff states the parties met and conferred about all issue of dispute multiple times, he does not provide specifics of when each discovery issue regarding the interrogatory or RFP items identified in the motion to compel were discussed in accordance with Local Rule 251(b) and this court's standing order. Second, none of plaintiff's meet and confer letters identify defendant Cary Interrogatories Nos. 20 and 21 as discovery issues necessitating a meet and confer. See ECF No. 53-2 at 40-45; id. at 47-61; id. at 78; ECF No. 61-1 at 121-123. Even if they had, plaintiff—the moving party—still fails to specifically state when the parties met and conferred in compliance with Local Rule 251(b) and this court's standing order with respect to these two interrogatories. Third, although plaintiff's March 11, 2025, and May 7, 2025, meet and confer letters *do* identify discovery disputes with respect to defendant Cary's Interrogatories Nos. 8 and 9, defendant Ng's Interrogatories Nos. 7 and 8, and RFPs Nos. 2, 6, 26-27, 30, absent a more specific statement from plaintiff's counsel, it appears the parties *did not* actually discuss these items during their May 2, 2025, telephonic meet and confer, or any other time before the

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<sup>1</sup> It is not clear whether plaintiff's counsel is referring to Cary Interrogatories Nos. 20 and 21 only or all discovery disputes at issue in the motion to compel. See ECF No. 61-1 ¶¶ 46, 47. For purposes of ruling on these motions, the court will assume plaintiff was referring to all discovery disputes at issue in the motions to compel (ECF Nos. 53, 54).

1 filing of the motion to compel or joint statement. Accordingly, with respect to these nine items, it  
 2 appears the parties may have failed to comply with Local Rule 251(b) and the undersigned's  
 3 standing order.

4 Because it is contested whether the parties met and conferred on all the items identified in  
 5 the preceding paragraph, and because further meet and confer efforts may resolve some of the  
 6 issues presented to the court, ruling on these items will be deferred. Cf. Akkawi v. Sadr, 2022  
 7 WL 2442234 at \*1, 2022 U.S. Dist. LEXIS 117499, at \*3 (E.D. Cal. July 5, 2022) (when a party  
 8 fails to comply with Local Rule 251, discovery motions are denied without prejudice to re-filing).  
 9 The parties are directed to meet and confer **within fourteen days** of the date of this order,  
 10 regarding defendant Cary's Interrogatories Nos. 8, 9, 20, and 21, defendant Ng's Interrogatories  
 11 Nos. 7 and 8, and RFP Nos. 2, 6, 26-27, 30. **Within 48 hours** of concluding the meet and confer,  
 12 plaintiff will be required to file a notice informing the court which (if any) of these issues are now  
 13 moot or have been narrowed and which (if any) continue to require a court ruling.

14 B. Adequacy of Defendants' Responses to Interrogatories

15 i. Cary Interrogatory No. 7

16 **Cary Interrogatory No. 7:** "Identify when (DATE AND TIME) YOU  
 17 considered any factors in the approval process of the cell transfer of  
 ROBERTO ROJAS into the cell occupied by EUGENE CLAPPS."

18 **Defendant Cary's Response to Interrogatory No. 7:** Defendant objects  
 19 to this interrogatory on the grounds that, as used in this interrogatory, the  
 20 word "factors" is ambiguous and impermissibly vague. Without waiving  
 the foregoing objection, Defendant responds as follows: I was not the  
 person who approved the cell move.

21 Plaintiff argues that the word "factors" has been used extensively in this litigation and  
 22 plainly refers to factors like race compatibility, gang affiliation, mental health, and prior offenses,  
 23 which are considered by prison officials prior to authorizing cell transfers. ECF No. 53 at 5.  
 24 Plaintiff also argues that defendant Cary's response does not answer the question. Id. The  
 25 interrogatory does not ask who is responsible for approval of the cell move, but rather, when—if  
 26 ever—Cary considered any of the case factors related to the approval process. Id. Plaintiff  
 27 argues that because the SOMS keeps a record of when something is accessed, Cary should be  
 28 required to provide an answer with the date and time he considered the factors or, in the



1 alternative, affirmatively state that he did not consider any factors in the approval process.

2 Defendant responds that (1) there is no specific understanding among the parties as what  
3 “factors” refers to in this case; (2) the interrogatory is fatally flawed because it is based on a false  
4 assumption that Cary considered “factors” and approved plaintiff’s request for a bed move; and  
5 (3) Cary was deposed and provided extensive testimony about the information gathered before he  
6 submitted plaintiff’s request to Ng for approval. ECF No. 55 at 7.

7 In reply, plaintiff argues that the Department Operational Manual and the Supplemental  
8 Manuel for CSP-Sac require officers involved in cell moves to review factors, some of which  
9 defendant Cary has testified he reviewed. ECF No. 61 at 6. Plaintiff also states the approval  
10 process involved both Cary and Ng, and that the interrogatory is not asking date and time of when  
11 Cary approved the bed transfer but rather date and time that he considered any factors in the  
12 approval process. Id.

13 Plaintiff’s arguments are well taken. The term “factors” is not vague because the  
14 Departmental Operational Manual and Supplemental Manual provide a list of factors that officers  
15 are required to review before a bed or cell transfer, and Cary and Ng both testified regarding what  
16 factors or items are looked at to approve a cell transfer. See ECF No. 61-1 at 4 (plaintiff’s  
17 counsel declaration in support of reply, ¶ 4); 126-131 (excerpt from Ng deposition transcript); Id.  
18 at 136 (excerpt from Cary deposition transcript). Additionally, the interrogatory does not ask that  
19 Cary identify the date and time when he considered factors in “*approving*” the cell transfer.  
20 Instead, the interrogatory seeks information about date and time that Cary *considered any*  
21 *information* related to the bed transfer *approval process*, as he was involved in the approval  
22 process even if he did not make the final decision. Moreover, the fact that Cary was deposed  
23 regarding some of this information, three months after the interrogatories were served, does not  
24 relieve him of the obligation to respond to this interrogatory with the specific information  
25 requested, especially where he has testified that SOMS keeps records of when something is  
26 accessed.<sup>2</sup>

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27 <sup>2</sup> The court notes that in response to other interrogatories and RFPs concerning records accessed  
28 or information considered, defendants referred plaintiff to 2,000 plus pages of SOMS records,

Accordingly, Cary will be required to provide further responses to Interrogatory No. 7. Specifically, Cary is required to review the files and provide the date and time that he accessed SOMS to review any information considered by him as part of the cell transfer approval process, even if he did not make the final decision approving the cell transfer.

ii. Cary Interrogatory No. 14

**Cary Interrogatory No. 14:** Set forth all training or education YOU received prior to February 2020 regarding the procedures for transferring an inmate from one cell to a double-bunk cell (or two inmate cell) with a cell mate already occupying the cell.

**Defendant Cary's Response to Interrogatory No. 14:** "My training regarding procedures for cell moves has been on-the-job."

Plaintiff argues that this response is evasive and incomplete because it explains the manner in which the training was provided but not what the training was. ECF No. 53 at 7. Defendant responds that he reasonably interpreted this interrogatory to seek a list of names or titles of coursework, seminars, or other formal training relate to procedures for bed moves; had he taken any such classes, he would have identified them; the trainings would also be listed in Cary's training file, which was produced at AGO 4522 – AGO 4616; and if this information was truly relevant, plaintiff's counsel could have raised these questions during Cary's deposition, which took place two weeks after Cary provided a response to this interrogatory. ECF No. 55 at 8. Plaintiff argues in reply that Interrogatory No. 14 requires more than a general answer, and accordingly Cary should be required to set forth information regarding who trained him, when he was trained, and what he was trained about, even if it was on-the-job training.

As an initial matter, the court does not agree with defendant that failure to raise the issue at the defendant's deposition necessarily means the issue is irrelevant. There are many reasons why it may not have come up. As plaintiff argues, the request does not ask Cary to set forth all "formal" training; it asks him to "[s]et forth *all* training or education YOU received" regarding

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ECF No. 53-2 at 23 (responses to Interrogatory Nos. 20, 21); ECF No. 59 at 9 (response to RFP No. 3), and in response to the plaintiff's motions to compel, defendants provided a SOMS Activity Log, which they claim is detailed, ECF No. 55 at 14, but do not attach. To the extent there is overlap in the information, the court finds that these responses are insufficient to satisfy the defendants obligation to respond to defendant Cary's Interrogatory No. 7.

1 the subject matter identified. A response regarding how he was trained and producing his training  
2 file are insufficient in response to this specific interrogatory.

3 Accordingly, Cary will be required to provide further responses to Interrogatory No. 14,  
4 setting forth “all trainings or education” he received regarding the subject matter identified, and  
5 explaining what “on-the-job” training he received “regarding the procedures for transferring an  
6 inmate from one cell to a double-bunk cell (or two inmate cell) with a cell mate already  
7 occupying the cell,” when he received these trainings, and from who he received them. To the  
8 extent that Cary did not receive any training with respect to these procedures, he must respond  
9 accordingly.

10 iii. Ng’s Interrogatory No. 2

11 **Ng Interrogatory No. 2:** Identify all documentation (regardless of storage  
12 medium (i.e., SOMS, paper, etc.) of factors YOU considered when  
13 approving the transfer of ROBERTO ROJAS in the cell occupied by  
14 EUGENE CLAPPS.”

15 **Defendant Ng’s Response to Interrogatory No. 2:** Defendant objects to  
16 this interrogatory on the grounds that, as used in this interrogatory, the  
17 phrase ‘documentation...of factors YOU considered’ is ambiguous and  
18 impermissibly vague. Without waiving the foregoing objection, Defendant  
19 responds as follows: Documents showing that both inmates were racially-  
20 eligible for double celling and had no enemy concerns were contained in  
21 the SOMS and ERMS files as relayed to me by Officer Cary and previously  
22 provided with Defendants’ initial disclosures.

23 Plaintiff argues that the language “documentation of factors YOU considered” is not  
24 vague or ambiguous, because “the whole theory of this case is that defendant failed to follow  
25 proper procedures in approving the cell transfer and, as a result, [plaintiff] was severely injured  
26 by EUGENE CLAPPS.” ECF No. 53-1 at 9. Plaintiff further argues that [i]f defendant [Ng] did  
27 access SOMS as claimed, then there should be documentation that supports that claim.” Id.

28 Defendant responds that Ng Interrogatory No. 2 is fatally flawed because it is based on an  
incorrect assumption of fact that Ng reviewed documentation before approving the cell transfer.  
ECF No. 55 at 9. Ng did not review documentation; he relied on information gathered by and  
relayed to him by Cary.

In reply, plaintiff argues that Ng has not identified any documentation of factors he  
considered when approving the transfer, and that defendants have only produced SOMS records

1 reflecting access to records on 2/16/20 for Officer Cary. ECF No. 61 at 8. In the relevant facts  
 2 section of the reply, plaintiff represents that Ng testified during his deposition that he “approved”  
 3 plaintiff’s cell transfer in the “computer,” but then recanted his earlier testimony after he spoke to  
 4 Sergeant Martinez, at the direction of his counsel, during a deposition break. Id. at 5.

5 The discovery responses before the court indicate that Ng did not enter information into  
 6 SOMs regarding his approval, and that only Cary accessed SOMS before Ng made the decision to  
 7 approve the transfer. Although plaintiff claims Ng testified otherwise, no deposition excerpt or  
 8 other information supporting this statement has been provided. That said, the court agrees that  
 9 Ng’s response is nonresponsive.

10 Accordingly, the court will require a further response from Ng clearly stating whether  
 11 there exists “any documentation (regardless of storage medium (i.e., SOMS, paper, etc.)) of  
 12 factors he considered when approving the transfer of ROBERTO ROJAS in the cell occupied  
 13 EUGENE CLAPPS.” If such documents exist, he should identify them with specificity. If not,  
 14 he should clearly state he did not review or consider any documentation, including any records in  
 15 SOMS, of factors before approving plaintiff’s bed transfer.

### 16 C. Adequacy of Defendants’ Response to RFP No. 3

17 **RFP No. 3:** Produce any and all SOMS records, regardless of medium,  
 18 reflecting the assessment and approval of cell transfer of Roberto Rojas  
 into the cell of Eugene Clapps on February 16, 2020.

19 **Defendant’s Response to RFP No. 3:** Defendants object to this Request  
 20 for Production of Documents on the grounds that the word “assessment” as  
 21 used in this context is impermissibly vague and ambiguous. Defendants  
 22 also object on the grounds that this Request for Production of Documents  
 23 is duplicative of Request for Production of Documents number 2 and  
 appears to be compound insofar as it seeks documents related to an  
 “assessment” and documents related to approval of the cell move. Without  
 waiving the foregoing objections, Defendants respond as follows: All  
 documents responsive to this request were produced on December 4, 2024.

24 Plaintiff argues that this RFP is not vague or ambiguous. “Plaintiff is requesting that  
 25 defendants produce records that would reflect the specific process of approving the cell transfer  
 26 of [plaintiff] into the cell of EUGENE CLAPPS.” ECF No. 54 at 6; ECF No. 59 at 7. Plaintiff  
 27 states that he has learned there are certain protocols for reviewing and approving cell transfers  
 28

1 that requires accessing and reviewing certain records, that plaintiff has alleged defendants did not  
2 follow these procedures, that defendants' response "does not outline which records from the  
3 December 4, 2024 disclosures are responsive," that "[i]f these documents exist, defendants are  
4 obligated to produced them," and "[i]f they do not exist, defendant should be compelled to give a  
5 clear statement that there are no documents responsive to this demand." ECF No. 54-1 at 7.

6 Defendants respond that the request is unclear, plaintiff's explanation of why the request  
7 was made indicates plaintiff is seeking evidence that is not relevant to his claims because there is  
8 no private right of action to enforce an administrative regulation; "to the extent that the SOMS  
9 records can be said to reflect the 'specific process of approving the cell transfer,' SOMS records  
10 were produced on December 4, 2024 at AGO 0967 – AGO 2576 and AGO 3339 – AGO 4355;  
11 and "as a courtesy, SOMS Activity Detail Logs showing Defendant Cary's access of the SOMS  
12 system for records related to Plaintiff and inmate Clapps on February 16, 2020, were generated  
13 and produced to Plaintiff on May 29, 2025." ECF No. 56 at 7-8; ECF No. 59 at 8-9.

14 Plaintiff contends that operational manual requirements are relevant to his causes of  
15 action. ECF No. 62 at 6. Also, the fact that defendants were able to produce "courtesy" SOMS  
16 records for defendant Cary, which are heavily redacted, but not Ng suggests that SOMS records  
17 have not been produced. Id.

18 The court rejects defendants' arguments. The term "assessment" in this context is not  
19 vague or ambiguous. Assessment refers to whatever evaluation led to the approval of the cell  
20 transfer. Additionally, whether defendants followed an established procedure or failed to do so is  
21 relevant to the questions whether they acted with deliberate indifference and/or reasonable care in  
22 approving the cell transfer. Relevance is not defeated by the fact that violation of policies and  
23 procedures does not support an independent cause of action.

24 Accordingly, defendants will be required to provide further responses to RFP No. 3.  
25 Defendants must identify the specific February 16, 2020, SOMS records that reflect the records  
26 defendants reviewed as part of the assessment and/or evaluation, the assessment and/or evaluation  
27 done to approve the cell transfer, and the approval of the cell transfer. If some records exist,  
28 defendants must identify those records with specificity and assert no other responsive records

exists. If no responsive records exist, defendants must clearly and unambiguously state so in response to RFP No. 3.

IV. Sanctions

With respect to Cary Interrogatories Nos. 7, 14, Ng's Interrogatory No. 2, and RFP No. 3, the court finds that defendants were not substantially justified in opposing plaintiff's motions. Accordingly, sanctions against defendants may be warranted. However, because several discovery disputes remain and the court is deferring ruling on those issues to a future date, the court will also defer ruling on the parties' motions for sanctions.

The parties are reminded of their obligation to meet and confer in good faith. Should the parties fail to meet and confer in good faith about the remaining issues, and/or should any continued failure to produce or to supplement lack substantial justification, the court will consider sanctions.

V. Conclusion

For the reasons set forth above, IT IS HEREBY ORDERED that:

1. Plaintiff's motion to compel further interrogatory responses (ECF No. 53) is GRANTED IN PART as follows:

- a. Defendant Cary shall provide further responses to Interrogatories Nos. 7 and 14, as set forth above.
- b. Defendant Ng shall provide further responses to Interrogatory No. 2 as set forth above.
- c. The court DEFERS ruling on Cary Interrogatories Nos. 8, 9, 20, and 21, and Ng Interrogatories Nos. 7 and 8.
- d. **Within fourteen days** from the date of this order, the parties must meet and confer as specified above regarding the outstanding disputes. **Within 48 hours** of concluding the meet and confer, plaintiff shall file a notice informing the court which, if any, of these issues are moot and which, if any, continue to require a court ruling.

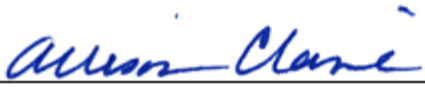
2. Plaintiff's motion to compel further responses to requests for production (ECF No. 54) is GRANTED IN PART as follows.

- a. Defendants shall provide further responses to RFP No. 3 as set forth above.
- b. The court DEFERS ruling on RFP Nos. 2, 6, 26-27, and 30.
- c. **Within fourteen days** from the date of this order, the parties must meet and confer regarding the outstanding discovery disputes. **Within 48 hours** of concluding the meet and confer, plaintiff shall file a notice informing the court which, if any, of these issues are moot and which, if any, continue to require a court ruling.

3. The court DEFERS ruling on all requests for sanctions. Should the parties fail to meet and confer in good faith as directed herein, and/or should any continued failure to produce or to supplement lack substantial justification, the court will consider sanctions.

4. No further briefing should be submitted unless authorized or requested by the court.

DATED: June 11, 2025

  
ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE